(5) Mr. Karpal Singh was not counsel for the applicant at the trial and so he was unable to study the appeal record closely on October 13.

Having considered all the circumstances of the case, I find the reasons put forward are too flimsy and frivolous for me to exercise my discretion under section 310 of the Criminal Procedure Code in favour of the applicant. As solicitor engaged in the prosecution of the appeal, it is the duty of Mr. Karpal Singh to be diligent once the record of appeal had been served on Friday, October 3, 1980. No reasonable explanation is given why October 4 and 5 (though a Saturday and Sunday respectively) should not be used for perusing the appeal record and preparing the Petition of Appeal, particularly when Mr. Karpal Singh fully knew that he had to attend the Penang State Legislative Assembly meeting on October 6. The two affidavits do not disclose the duration of the Legislative Assembly meeting and it would appear that Mr. Karpal Singh was quite free on October 7 and 8. With full knowledge that the Petition of Appeal had to be filed by October 13, there is no conceivable reason why he chose to wait and attend to its preparation only on the 9th, particularly when he knew that on that date he had to appear in Kuala Lumpur High Court in respect of Originating Motion No. 107 of 1978 and, as such, in all probabilities, he would not have enough time to deal with the criminal appeal. There is no evidence to show for how long Mr. Karpal Singh was ill on the 9th. The two affidavits in support merely show that, firstly, Mr. Karpal Singh was busy and as he is entitled to do, he chose to give priority to his duty as an Assemblyman in preference to his duty as a solicitor and counsel for the applicant, and, secondly, he wanted to relax on Saturday and Sunday knowing that the period for filing Petition of Appeal had started to run. In fact, no Petition of Appeal had been prepared when this application came up for hearing for the first time on November 17, 1980, i.e. more than a month after the last date for filing the petition. Nor was it ready on March 2, 1981 when the application was disposed of. Further, there is nothing on record to show that the applicant's conviction is wrongful. In the circumstances, I am of the view that no substantial justice would be done if the extension of time were allowed in this particular case. For the purpose of doing substantial justice, the court must bear in mind that justice must be done not only to the convicted person but also to society at large on whose behalf the Public Prosecutor acts. As stated by Thomson C.J. in *Veerasingam* case at page 78: "It is just as imperative that a rightful conviction should be successfully defended as it is that a wrongful one should be successfully attacked".

Further, as was held by Thomson C.J. in *Veerasingam* case (*ante*), the court is entitled to look at what other judges have done as an illustration. Thus, in *R.* v. *Nagalingam,*[4] the grounds alleged were that counsel for the appellant, as in the present case, had been engaged elsewhere and that the length of the record involved considerable time in transcribing it. The court (Huggard C.J., Burton and Mills JJ.) ruled that neither of these grounds was sufficient and the application to amend Petition of Appeal was refused. *Nagalingam's* case was followed by Terrell J. in *Rex* v. *Moona Mohamed Hussain Maricar.*[5] In my view, an extension of time to file Petition of Appeal or to amend such petition out of time should not be granted as a matter of course.

Having regard to all the circumstances of this particular case and in exercise of the discretion conferred by section 310 of the Criminal Procedure Code, I dismiss this application.

Application dismissed.

Solicitors: *Karpal Singh & Co.*

T.R. MAHESUVARY v. LEE YIN SHIN & ANOR.

[A.C.J. (George J.) March 19, 1981]

[Raub — High Court Civil Appeal No. 1 of 1981]

Landlord and Tenant — Rent-controlled premises — One year notice to quit required — Notice given less than required period — Subsequent Notice sent — Notice bad ab initio not curable by subsequent "corrective" notice — Control of Rent Act, 1966, s. 16(i)(f)(ii).

The plaintiffs, owners and landlords of the premises known as No. 89 Jalan Besar, Kuala Lipis, had claimed against the defendant vacant possession of the said premises as well as double rent and costs. The said premises were controlled premises within the meaning of the Control of Rent Act 1966. The plaintiffs were required, *inter alia,* to give notice of not less than one year to the defendant. A Notice dated June 30, 1978 was sent to and received by the defendant. The Notice required the defendant to give up vacant possession of the premises on or before May 31, 1979 which meant that even if the Notice was received by the defendant on the day it was written and posted, it only gave her 11 months' notice. The first plaintiff in his evidence testified that on realising that the notice was short by one month he instructed his solicitors on July 11, 1978 to send another notice to the defendant requiring her "to quit on June 30, 1979". He said that he had himself "informed the defendant verbally to quit the premises on or after June 30, 1979". A copy of the second Notice which he had instructed his solicitors to send to the defendant was produced.

The defendant appealed.

Held, allowing the appeal: (1) the learned magistrate erred in concluding "on a preponderance of probabilities" that the defendant had received the second notice. The learned magistrate should have invoked section 114(g) of the Evidence Act and should have held that the second notice was neither sent to nor received by the defendant;

(2) even if it had been received by the defendant and even if the first plaintiff had after realising the mistake in the first notice told the defendant to "quit the premises on or after the 30th June, 1979" it cannot be said that the required one year notice had been given to the defendant. A notice that is bad *ab initio* cannot be cured by a subsequent "corrective" notice, even when the second notice is given before the expiry of the time given by the first notice;

(3) the fact that the date given in the first notice was obviously a slip on the part of the plaintiffs or their legal advisers was of no help to the plaintiffs in that while there may be a natural temptation to put a strained construction on language in aid of people who have been unfortunate enough to make slips, such a temptation must be resisted because documents are not to be strained and principles of construction are not to be outraged in order to do what may appear to be fair in an individual case;

(4) the defendant was protected by the Control of Rent Act 1966 and whatever may be the equities to take away from her the protection she has enjoyed there ought to be a strict adherence of the requirements of the Act.

Cases referred to:-

(1) *In re Bebington's Tenancy* [1921] 1 Ch. 559.

(2) *Hankey* v. *Clavering* [1942] 2 K.B. 326, 328.

CIVIL APPEAL.

A. Kanesalingam for the appellant/defendant.

S.T. Lee for the respondents/plaintiffs.

Cur. Adv. Vult.

George J.: At the outset my attention was drawn by both counsel to certain procedural irregularities pertaining to the preparation of the record of appeal but in view of the fact that counsel for both sides were prepared to and waived the irregularities I was prepared to and heard the appeal.

The plaintiffs as the owners and landlords of the premises known as No. 89, Jalan Besar, Kuala Lipis, had claimed against the defendant vacant possession of the said premises as well as double rent and costs.

At all relevant times the premises were controlled premises within the meaning of the Control of Rent Act 1966.

No evidence was led as to when the plaintiffs became the owners of the premises. There was evidence that the defendant's husband was the original tenant and that after his death the defendant took over the tenancy. This could have been in 1957. Whether the plaintiffs at that time were the owners or landlords is not clear.

The first named plaintiff Lee Yin Shin one of the co-landlords lived and carried on his business of retailing sundry goods from another premises known as No. 77 Jalan Besar, Kuala Lipis, which premises he had rented from some other person who had on February 1, 1979 obtained an order from the local Rent Tribunal to the effect that the first named plaintiff give up vacant possession of No. 77 Jalan Besar, Kuala Lipis within one year from February 1, 1979.

The plaintiffs then appear to have decided to invoke the provision of section 16(1)(f)(ii) of the Control of Rent Act 1966 to obtain vacant possession of No. 89, Jalan Besar, Kuala Lipis from the defendant. This required *inter alia* that notice of not less than one year determining the tenancy be given to the defendant. A notice dated June 30, 1978, was sent to and received by the defendant. No evidence was led as to when the notice was sent or received. A copy of the notice was produced and marked as Exhibit P1. The notice required the defendant to give up vacant possession of the premises on or before May 31, 1979 which meant that even if the notice was received by the defendant on the day it was written and posted it only gave her 11 months' notice.

PW1 the first named plaintiff in his evidence testified that on realising that the notice was short by one month he instructed his solicitors on July 11, 1978 to send another notice to the defendant requiring her "to quit on June 30, 1979". He went on to testify that he had himself "informed the defendant verbally to quit the premises on or *after* June 30, 1979". (The emphasis is mine).

In cross-examining each of the witnesses for the plaintiffs, learned counsel for the defendant had put to them that the second notice in fact was never sent to which PW1 said that he did not send it but that his solicitors did. PW2's evidence was that he was told by PW1 that it had been sent by the solicitors.

For some unexplained reason nobody from the solicitors' firm was called to give evidence on this disputed fact. PW1 did produce a copy of a letter dated July 10, 1978 purporting to be the copy of the second notice which he had instructed his solicitors to send to the defendant. He claimed that he had received his copy by post about the middle of July 1978.

I am of the view that the learned Magistrate erred in concluding "on a preponderance of probabilities" that the defendant had received the second notice. It seems to me that the learned Magistrate should have invoked section 114(g) of the Evidence Act and should have held that the second notice was neither sent to nor received by the defendant.

Even if it had been received by the defendant and even if the first named plaintiff had after realising the mistake in the first notice told the defendant to "quit the premises on or after June 30, 1979" it cannot be said that the required one year's notice had been given to the defendant. A notice that is bad *ab initio* cannot be cured by a subsequent "corrective" notice, even when the second notice is given before the expiry of the time given by the first notice.

See *In re Bebington's Tenancy.*(1)

The fact that the date given in the first notice was obviously a slip on the part of the plaintiffs or their legal advisers is of no help to the plaintiffs in that while there may be a natural temptation to put a strained construction on language in aid of people who have been unfortunate enough to make slips, such a temptation must be resisted because documents are not to be strained and principles of construction are not to be outraged in order to do what may appear to be fair in an individual case. *Per* Lord Greene M.R. in *Hankey* v. *Clavering.*(2)

This defendant is protected by the Control of Rent Act 1966 and whatever may be the equities to take away from her the protection she has enjoyed, there ought to be a strict adherence of the requirements of the Act. In my view an effective notice as required by section 16(1)(f)(ii) had never been served on her.

The second matter raised in this appeal was the question of alternative accommodation and greater hardship on which matters I express no opinion since the appeal can be disposed of on the earlier question of whether there was a valid termination of tenancy.

In my judgment this appeal should be allowed. The order of the Magistrate made on May 26, 1980 is set aside and substituted by an order dismissing the plaintiffs' claim. The plaintiffs shall pay to the defendant the costs in the court below and in this court. There will be an order in those terms.

Appeal allowed.

Solicitors: *Kanesalingam & Co.; Low & Lee.*